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HUMAN RIGHTS COMMITTEE
Seventy-second session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

REPUBLIC OF GUATEMALA

1. The Human Rights Committee considered the second periodic report of Guatemala (CCPR/C/GTM/99/2 and HRI/CORE/1/Add.47) at its 1940th, 1941st and 1942nd meetings held on 17 and 18 July 2001 (see CCPR/C/SR.1940, 1941 and 1942) and adopted the following comments at its 1954th meeting held on 26 July 2001.

A. Introduction

2. The Committee welcomes the State party's second periodic report, submitted with minimal delay, and the delegation's willingness to stay in contact with the Committee. However, the Committee regrets that this report contains information on general legislation in Guatemala, but scarcely refers to the situation regarding the implementation of the Covenant in practice and the difficulties encountered in its implementation. The Committee welcomes the fact that the delegation referred to this matter in its statements. The Committee appreciates the information provided by the delegation on various issues, which has enabled it to have a clearer idea of the general human rights situation in the State party.

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B. Positive aspects

3. The Committee welcomes the fact that the State party has ratified the first Optional Protocol to the International Covenant on Civil and Political Rights with effect from 28 February 2001.

4. The Committee is pleased that efforts have been made to provide additional resources for the Office of the Human Rights Procurator and for the Presidential Commission for Coordinating Executive Policy in the field of Human Rights (COPREDEH), thus enabling them better to carry out their work.

5. The Committee is pleased with the information received concerning the dismantling of the civilian self-defence patrols and the measures taken to professionalize the police forces.

6. The Committee welcomes the positive legislative measures adopted on behalf of women and the establishment of various bodies intended to promote and protect women's rights.

7. The Committee takes note of the recent measures adopted to establish a career structure for the judiciary.

8. The Committee welcomes the State party's recognition of "institutional responsibility", as endorsed by the President of the Republic, for the Las Dos Erres massacre and other serious violations of human rights which occurred during the civil war for the purpose of being able to provide financial compensation to the victims and guarantee the prosecution of those responsible.

9. The Committee considers it a positive factor that the administration of justice has been extended to many municipalities in the country through the appointment of justices of the peace, some of whom are bilingual and who have criminal jurisdiction.

C. Subjects of concern and recommendations

10. In ratifying the Covenant the State party accepted the obligations contained in article 2, paragraphs 1 and 2, to ensure to all individuals subject to its jurisdiction the rights recognized in the Covenant and to take the necessary steps to adopt, if they do not already exist, measures to give effect to those rights. The Committee is concerned about the State party's claim that the principles of the Constitution prevent it from giving effect to the provisions of the Covenant and, for example, about the fact that personal jurisdiction has been maintained for members of the military and some rights of members of indigenous communities are not being recognized.

> The State party should not put forward the limitations of its Constitution as a reason for non-compliance with the Covenant, but should draw up the necessary reforms to achieve such compliance.

11. The Committee is concerned about the wide variety of possible states of emergency listed in the Constitution. The possibility of suspending article 5 of the Constitution during states of exception does not appear to be compatible with the Covenant, since it suspends in general terms

the right of the individual to do what the law does not prohibit and not to be compelled to obey illegal orders. Likewise, the Committee is concerned that the state of exception declared in June 2001 has not been duly notified to the other States parties through the intermediary of the Secretary-General of the United Nations.

The State party should ensure that its constitutional provisions for emergency situations are compatible with article 4 of the Covenant. It should also comply with the obligation to notify the other States parties through the intermediary of the Secretary-General of the United Nations in all cases when an emergency situation is declared and to inform them of the provisions from which it has derogated and of the reasons for the derogation.

12. The Committee is disturbed that the absence of a State policy intended to combat impunity has prevented the identification, trial and punishment of those responsible for violations of article 6 and the payment of compensation to the victims. The Committee is concerned that delays in and the shortcomings of legal procedure and the failure of the authorities to comply with the decisions and orders of the courts have strengthened the perception by the public that justice is not being done.

The State party should:

(a) Strictly apply the National Reconciliation Act, which explicitly excludes crimes against humanity from amnesty;

(b) Set up an appropriate independent body to investigate disappearances;

(c) Provide adequate compensation for the victims of human rights violations.

13. The Committee is gravely concerned about reports of human rights violations, particularly gross and systematic violations of the right to life, liberty and security of person. It is especially concerned about reports of disappearances in the State party, both the most recent reports and those in the past. The information supplied by the delegation that all such situations are being investigated is not satisfactory.

Taking into account the provisions of articles 6, 7 and 9 of the Covenant, the State party should give special priority to investigating and bringing to justice the perpetrators of human rights violations, including police and military personnel. The perpetrators of such acts must be tried and punished; mere separation from service or dismissal from the army is not sufficient. The State party should also take all necessary measures to prevent the occurrence of such acts.

14. The Committee's deep concern also extends to the many reports of, and the State party's failure to provide answers about, extrajudicial executions allegedly carried out by former members of the military and paramilitary forces and attributed to ordinary criminals. These acts are all contrary to article 6 of the Covenant.

The State party should conduct investigations to identify those responsible for extrajudicial executions and bring them to justice. It should also take the necessary measures to prevent the occurrence of such violations of articles 6 and 7 of the Covenant.

15. The Committee is also concerned about the information received on the traffic in children separated from their parents, a situation which has still not yet been clarified.

The State party should conduct investigations to identify those responsible for the traffic in children and bring them to justice. It should take the necessary measures to prevent the occurrence of such violations of articles 6, 7 and 24 of the Covenant. It should also take the appropriate measures to comply with the provisions of international instruments on child labour.

16. Despite the efforts made by the authorities through workshops to raise public awareness, the Committee is deeply concerned about reports of lynchings of members of the judiciary in breach of articles 6 and 7 of the Covenant and about the apparent delay by the State party in reacting to such incidents.

The State party has the obligation to ensure the full protection of all authorities, especially their security during the exercise of their judicial functions.

17. The Committee is concerned about the application of the death penalty and, in particular, about the increase in the number of crimes carrying that penalty, its application having been extended to abduction not resulting in death, contrary to the provisions of the Covenant.

The State party should limit the application of the death penalty to the most serious crimes and restrict the number of crimes carrying that penalty in accordance with article 6, paragraph 2, of the Covenant. The State party is invited to move towards the full abolition of the death penalty.

18. The Committee is concerned about the elimination, by the Act of 12 May 2001, of the right, for persons sentenced to death, to seek pardon or commutation of the sentence, as recognized in article 6, paragraph 4, of the Covenant. It takes note of the information supplied by the delegation that, despite the existence of that Act, the President of the Republic has exercised the right to grant pardon on the basis of the precedence of international treaties over ordinary laws.

The State party should guarantee any person sentenced to death the right to seek pardon or commutation of sentence by bringing the legislation into line with the obligations of the Covenant and adopting provisions to ensure that the right to seek pardon may be exercised.

19. The criminalization of all abortion, with the severe penalties imposed by the legislation in force except where the mother's life is in danger, gives rise to serious problems, especially in the light of unchallenged reports of the serious impact on maternal mortality of clandestine abortions and the lack of information on family planning.

The State party has the duty to adopt the necessary measures to guarantee the right to life (art. 6) of pregnant women who decide to interrupt their pregnancy by providing the necessary information and resources to guarantee their rights and amending the legislation to provide for exceptions to the general prohibition of all abortions except where the mother's life is in danger.

20. The wide jurisdiction of the military courts to hear all cases involving the trial of military personnel and their powers to decide cases that belong to the ordinary courts contribute to the impunity enjoyed by such personnel and prevent their punishment for serious human rights violations, as the State party recognized when including the amendments not adopted in the 1999 referendum.

The State party should amend the law to limit the jurisdiction of the military courts to the trial of military personnel who are accused of crimes of an exclusively military nature (arts. 6, 7, 9 and 14 of the Covenant).

21. The Committee notes with concern that members of various sectors of society, particularly members of the judiciary, lawyers, human rights activists and trade unionists, are being intimidated, threatened with death and even killed, the lawful exercise of their functions is thus being seriously hampered (arts. 6, 7 and 9 of the Covenant). The Committee regrets that effective measures to prevent the repetition of such acts have still not been taken.

The State party should take all necessary preventive and protective measures to ensure that the members of various sectors of society, particularly members of the judiciary, lawyers, human rights activists and trade unionists, can carry out their functions without intimidation of any kind.

22. The Committee is concerned about the large percentage of prisoners held in pre-trial detention. This means that a large number of persons accused of crimes remain in pre-trial detention for long periods, pending the completion of the criminal proceedings against them, contrary to article 9, paragraph 3, and article 14, paragraph 2, of the Covenant.

The State party should continue to take all necessary measures to reduce the number of persons in pre-trial detention and the period during which they are detained.

23. The Committee regrets the lack of specific information on the provisions governing detention, especially on the point at which the prisoner has access to a lawyer, a doctor, an interpreter, etc.

The State party should provide this information so that the Committee can assess its compatibility with the requirements set out in articles 9 and 14 of the Covenant.

24. The Committee is concerned about the continued existence of a legal provision exempting a rapist from any penalty if he marries the victim and about the continued requirement in the legislation that a woman must be "honest" for that offence to be held to have been committed.

The State party should immediately repeal this legislation, which is incompatible with articles 3, 23, 26 and 2 (3) of the Covenant.

25. The Committee is concerned that women do not participate enough in political life, the judiciary and other sectors and that the information provided by the State party is not detailed enough to enable the Committee to evaluate either the progress made or the problems that continue to exist in this regard.

In order to comply with articles 3, 25 and 26, the State party should take appropriate measures to improve participation by women, through affirmative action programmes, if necessary and to inform the Committee of the results of such programmes.

26. The Committee deplores the situation of street children, which appears to be getting worse. These children run the greatest risk of sexual violence and are vulnerable to sexual trafficking.

The State party should take effective measures both to protect and rehabilitate street children, pursuant to article 24 of the Covenant, including measures to put an end to sexual exploitation and child pornography, and to punish those found guilty of any kind of violence against minors.

27. The Committee is concerned about the situation of children in the State party and, in particular, about the postponement of the entry into force of the Juvenile Code, which was adopted and promulgated, but then had its entry into force deferred.

The State party should promulgate a Juvenile Code that guarantees minors the enjoyment of all their rights pursuant to article 24 of the Covenant.

28. The Committee is concerned that the laws in force on defamation may be used to restrict criticism of the Government or public officials.

The State party should reform the legislation on defamation to ensure a proper balance between the protection of a person's reputation and freedom of expression (art. 19 of the Covenant).

29. Even though the Committee recognizes that the State party has made efforts to improve the situation of members of indigenous communities, it regrets that it has not been possible to adopt legislation designed to guarantee the full enjoyment of all their rights under the Covenant, including the restitution of communal lands, the elimination of discrimination in employment and education and participation in other areas of the life of society.

The State party should continue its efforts to guarantee members of indigenous communities the enjoyment of all the rights recognized by article 27 of the Covenant and adopt comprehensive legislation for this purpose. It should also ensure that the implementation of this legislation improves the situation of members of indigenous communities in practice and not only on paper.

30. The State party should widely publicize the text of its second periodic report and these concluding observations.

31. The State party should, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, furnish within one year information on any action it has taken in the light of the Committee's recommendations on disappearances and extrajudicial executions (paras. 12-15 of these observations) and on pre-trial detention (para. 23). The Committee requests that the information on the remainder of its recommendations should be included in the third periodic report, due to be submitted by 1 August 2005.

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